IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 795 OF 2007

Voltas Limited.... Petitioner

versus

Chandrakant Y. Bhramhane & ors..... Respondent.

Shri K.S.Bapat i/b Haresh Mehta & Co. for the petitioners.
Shri N.M.Ganguli for the respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 23RD APRIL, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner is a public limited company incorporated under the companies Act 1956. Respondent no.1 was employed with the petitioner on contractual basis for fixed term. The respondent no.1 joined the service with the petitioner in March 1995. In July 2004 the respondent no.1 submitted his resignation and the same was accepted by the petitioner with effect from 19-8-2004. The respondent no.1 made a claim before the controlling authority under the Payment of Gratuity Act 1972 and claimed an amount of Rs. 25,190/- towards gratuity whereas the petitioner had

offered a cheque in the sum of Rs. 12,202/- to the respondent no.1. The controlling authority included the conveyance allowance to determine the wages under section 2(s) of the Payment of Gratuity Act whereas he excluded the Site allowance. Aggrieved by the order passed by the controlling authority, the petitioner so also respondent no.1 filed respective appeals before the appellate authority under the Payment of Gratuity Act. The appellate authority has upheld the inclusion of conveyance allowance in the wages and has further directed the inclusion of site allowance also in the wages. It is this order passed by the appellate authority which is challenged by the employer by filing this writ petition.

3. The break up of the wages earned by the respondent no.1 is thus:

a) Basic Salary	:	Rs. 2350.00
b) HRA	:	Rs. 1000.00
c) Transport Allowance (conveyance)	:	Rs. 1000.00
s) Site allowance	:	Rs. 750.00
Gross	:	Rs. 5100.00

4. The learned counsel for the petitioner submits that what is included in the wages as defined in section 2(s) of the Payment of Gratuity Act comprise of basic salary and Dearness Allowance and it is not include any other allowance. The definition of wages under section 2(s) of the Act reads thus:

Section 2(s):

"Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid and payable to him in cash and includes dearness allowance but does not include any bonus, commission, house-rent allowance, overtime wages and any other allowance."

5. Relying on the judgment of the Supreme Court in **The straw Board Manufacturing Co.Ltd. Vs. Its workmen, reported in (1977) 2 S.C.C. page 329** the petitioner substantiate his submission made hereinabove. The Supreme Court has held in para 25, 26 and 27 as thus:

25. Decisions have been brought to our notice some of which refer to basic wages and others

to consolidated wages as the foundation for computation of gratuity. These are matters of discretion and the "feel" of the circumstances prevalent in the industry by the Tribunal and, unless it has gone haywire in the exercise of its discretion the award should stand. We see that in the payment of Gratuity Act also, not basic wages but gross wages inclusive of dearness allowance, have been taken as the basis. This incidentally, reflects the industrial sense in the country which has been crystalised into legislation.

26. All things considered, we are disinclined to alter the award on the two critical issues on which it was challenged. However there are certain minor clarifications which will eliminate ambiguity and, on that, both sides are agreed.

27. We clarify that wages will mean and include basic wages and dearness allowance and nothing else. This corresponds to section 2(s) of the Act.

6. As the Supreme Court has thus clarified that wages should include basic wages and dearness allowance and

nothing else. The question raised in the present petition is no longer res-integra and covered by the said judgment. The Supreme Court has proceeded to further clarify in para 27 that the position corresponds to section 2(s) of the act.

7. In the result, the writ petition deserves to be allowed and I proceed to allow the same. The impugned order passed by the controlling authority, including conveyance allowance in the wages, as defined under section 2(s) is quashed and set aside, so also the order passed by the appellate authority under the Payment of Gratuity Act, including conveyance allowance and site allowance in the wages, as defined under section 2(s) of the Act is also quashed and set aside. Rest of the order imougned in this petition is maintained. It is also declared that the respondent no.1 is entitled to receive gratuity without including conveyance allowance and site allowances in the wages.

8. The petitioner is granted permission to approach the appellate authority with a prayer for recalculation of the amount in view of this order. Rule made absolute in above terms.

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